

CLAIM OF THE CUBAN-AMERICAN SUGAR CO. AGAINST
THE UNITED STATES—VETO MESSAGE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RETURNING

WITHOUT APPROVAL THE BILL (S. 2696) ENTITLED "AN ACT CONFERRING JURISDICTION UPON THE COURT OF CLAIMS OF THE UNITED STATES TO CONSIDER AND RENDER JUDGMENT ON THE CLAIM OF THE CUBAN-AMERICAN SUGAR COMPANY AGAINST THE UNITED STATES"

JUNE 30 (legislative day, JUNE 27), 1952.—Read; referred to the Committee on the Judiciary and ordered to be printed

To the United States Senate:

I return herewith, without my approval, S. 2696, conferring jurisdiction upon the Court of Claims of the United States to consider and render judgment on the claim of the Cuban-American Sugar Co. against the United States.

The bill would confer jurisdiction upon the Court of Claims, notwithstanding the bar of the statute of limitations, to hear, determine, and render judgment on the claim, together with interest thereon, of the Cuban-American Sugar Co. against the United States. The claim of the company involves refund of taxes alleged to have been erroneously and illegally assessed and collected as excess-profits taxes for the period from January 1 to September 30, 1917. The bill would direct the Court of Claims to apply a specific method of tax computation in its determination of the suit and would enjoin the United States from using a defense that might otherwise be available to it.

The amount of the claim would appear to be \$790,115.87. The total interest has been computed as exceeding 180 percent of the claim, or over \$1,400,000. The provision of the bill permitting interest, therefore, subjects the Government to a possible fiscal liability of over \$2,200,000.

The record in this case is involved and complicated. It reveals, however, these simple facts: The company, in trying to make its tax liability as small as possible, calculated its taxes on one basis. Then, when it found a basis believed to be more advantageous, it asked to be allowed to change to the second basis. The Bureau of Internal Revenue agreed to permit the change. Still later, when the company realized that a modification of the original basis was even more beneficial, it tried to go back to it; but the realization came too late and the prescribed statutory period of limitation had run against its efforts. The fault was not that of the Government. Indeed, the Bureau of Internal Revenue was more than accommodating to the taxpayer in its efforts to accord a full and fair administrative consideration of the company's tax problems.

This is confirmed by the opinion of the Court of Claims in dismissing a petition by the company to recover on the claim which is the subject of S. 2696 (*The Cuban-American Sugar Company, Inc. v. United States* (1939), 27 F. Supp. 307). In this opinion, the court made it clear that the company had ample opportunity to have its tax liability for 1917 determined under the method which it sought to apply after the period of limitations with respect to that year had run. A petition for certiorari was denied by the United States Supreme Court (309 U. S. 681).

The 1927 claim which the company filed for refund of its 1917 taxes was based upon improper comparatives in the computation of the tax. The claim was denied by the Commissioner of Internal Revenue on March 15, 1933. The Court of Claims has held that this action by the Commissioner was an effective and final disposition of the claim and of all protests previously made or then pending before the Bureau of Internal Revenue. On April 4, 1933, after a favorable settlement had been made of the company's 1918, 1919, and 1920 tax liability, the company tried to amend its claim in order to obtain the same favorable consideration for its 1917 tax liability. The attempted amendment on April 4, 1933, was not based upon improper comparatives. Rather, it was a request for a different basis of computation, a statutory invested capital instead of the special assessment basis. The refund claim of April 4, 1933, was filed after the statute of limitations had precluded further consideration of it. Moreover, the Court of Claims specifically ruled that such an amendment could not be made after the claim for refund had been rejected.

The Cuban-American Sugar Co. has had the benefit of extensive administrative and judicial consideration of its claim. The Court of Claims dismissed the suit brought by the company against the United States, and the court's decision was a sound one. I see no justifiable reason for the company to be afforded a second day in court on this claim.

There are additional reasons why I cannot approve the bill before me.

First, should this bill become law, the interest which the Court of Claims would be required to assess on the principle of the claim would be at the statutory rate of 6 percent for tax overpayments. Since all payments were made on or before 1923, the total interest would exceed 180 percent of the principle of the claim, which the company asserts to be \$790,115.87. The interest alone would be over \$1,400,000. The total would be over \$2,200,000. The Government is not liable

for interest unless and until a debt becomes payable. Since the Government has owed no debt to this claimant, requiring the payment of such interest would be entirely improper.

Second, this bill would preclude the Court of Claims from deciding the proper amount of invested capital for the fiscal year 1917. The bill would direct the Court of Claims, in rendering judgment on the claim for excess-profits taxes for the period from January 1 to September 30, 1917, to use as the invested capital of the company an amount agreed upon in a stipulation entered into for the purpose of determining tax liability for the fiscal years 1918, 1919, and 1920. To the extent that this stipulation involved a determination of invested capital for the calendar year 1917, such a determination was relevant only to the computation of tax for the fiscal year 1918, only 3 months of which were included in the calendar year 1917. This point was stated specifically by the Court of Claims in its opinion dismissing the suit brought by the company. I see no reason for limiting Court of Claims review as this bill proposes to do. Even if it were desirable to place this matter before the court again, it should be free to judge the method of computation to be used. It should not be required to apply the method which the company finally chose as most advantageous to it after the period of limitations prescribed by statute had run.

Third, the bill is unsound from the standpoint of public policy. It is special legislation which grants relief to one taxpayer whose own marshaling of positions permitted the statute of limitations to cut off his legal remedies. There is no sound reason, in my opinion, to discriminate in this way against all other taxpayers who are bound by similar statutes. I cannot endorse a measure which provides a favored exception from our general law, on facts no more persuasive of unusual hardship than are present here.

For the reasons stated, I return this bill without my approval.

HARRY S. TRUMAN.

THE WHITE HOUSE, June 30, 1952.

S. 2696

EIGHTY-SECOND CONGRESS OF THE UNITED STATES OF AMERICA, AT THE SECOND SESSION, BEGUN AND HELD AT THE CITY OF WASHINGTON ON TUESDAY, THE EIGHTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND FIFTY-TWO

An Act Conferring jurisdiction upon the Court of Claims of the United States to consider and render judgment on the claim of The Cuban-American Sugar Company against the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims of the United States be, and hereby is, given jurisdiction to hear, determine, and render judgment on the claim, together with interest thereon, of The Cuban-American Sugar Company against the United States for a refund of taxes erroneously and illegally assessed and collected as excess-profits taxes for the period from January 1, 1917, to September 30, 1917. That, for the purpose of arriving at the correct determination of the tax for this period, the Court of Claims is to apply the method of computation under sections 201 and 203 of the Revenue Act of 1917, based upon the invested capital of the corporation amounting to \$39,848,530.85, which was the invested capital of The Cuban-American Sugar Company according to the decisions of the Board of Tax Appeals, all dated December 16, 1932, which decisions were based upon the stipulation entered into between The Cuban-American Sugar Company and the Commissioner of Internal Revenue, whereby it was agreed that the sum of \$39,848,530.85 was the invested capital of The Cuban-American Sugar Company for the calendar year 1917.

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SEC. 2. In the proceedings upon such claims before the Court of Claims the United States shall not avail itself of the defense that the General Counsel for the Bureau of Internal Revenue acted without legal authority in making such stipulation of settlement.

SEC. 3. Suit upon such claim may be instituted at any time within six months after the date of enactment of this Act, notwithstanding the lapse of time, laches, the form or any content or the time of filing of claims for the refund and alleged amendments thereto, heretofore filed or any statute of limitations. Proceedings for the determination of such claim and appeals from the payment of any judgment thereon shall be in the same manner as in the case of claims over which such court has jurisdiction under section 1346 of title 28, United States Code, as amended.

SAM RAYBURN,

Speaker of the House of Representatives.

ALBEN W. BARKLEY,

Vice President of the United States and President of the Senate.

[Endorsement on back of bill:]

I certify that this Act originated in the Senate.

LESLIE L. BIFFLE, *Secretary.*

